

INFORMATION BULLETIN #91

INCOME TAX

JUNE 2006

(Replaces Bulletin #91, dated July 2005)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Biodiesel Tax Credits

REFERENCES: IC 6-3.1-27

INTRODUCTION

There are three separate tax credits related to biodiesel. The first is a credit for producing biodiesel; the second credit is for producing blended biodiesel; and the third is for the retail sale of blended biodiesel to an end user. The credits can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.

I. BIODIESEL PRODUCTION TAX CREDIT

Biodiesel is defined as a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specification D6751-03a Standard Specification for biodiesel fuel (B100) blend stock for Distillate Fuels.

A taxpayer that has been certified by the Indiana Economic Development Corporation (IEDC), and produces biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of one dollar (\$1.00) multiplied by the number of gallons of biodiesel produced by the taxpayer during the taxable year and used to produce blended biodiesel.

The total amount of credits allowed may not exceed three million dollars (\$3,000,000) for a taxpayer for all taxable years. This amount may be increased to five million dollars (\$5,000,000) with the prior approval of the IEDC.

II. BLENDED BIODIESEL TAX CREDIT

Blended biodiesel is defined as a blend of biodiesel with petroleum diesel, so that the percentage of biodiesel in the blend is at least two percent (2%) (B2 or greater). The term does not include biodiesel (B100).

A taxpayer that has been certified by the IEDC, and produces blended biodiesel at a facility located in Indiana is entitled to a credit against the taxpayer's state tax liability equal to the product of two cents (\$.02) multiplied by the number of gallons of blended biodiesel produced at the Indiana facility and blended with Indiana produced biodiesel.

The total amount of credits allowed may not exceed three million dollars (\$3,000,000) for all taxpayers and all taxable years.

III. RETAIL SALE OF BLENDED BIODIESEL TAX CREDIT

A taxpayer that is a dealer and distributes at retail blended biodiesel is entitled to a credit against the taxpayer's state tax liability.

The credit allowed is one cent (\$.01) multiplied by the number of gallons of blended biodiesel distributed at retail by the taxpayer in a taxable year.

The total amount of credits allowed may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years. A credit may not be taken for blended biodiesel distributed at retail after December 31, 2010.

IV. APPLICATION FORM AND APPROVAL OF THE TAX CREDIT

Taxpayers desiring to claim one of the three credits must file a claim for credit on Form BD-100 Biodiesel Credit Application which is available at the Department's web site (www.in.gov/dor/taxforms/f&eforms).

Taxpayers desiring to claim the credit for biodiesel production or for blending biodiesel must attach a copy of the certification from the IEDC. Retailers selling to end users are not required to be certified by the IEDC. The claim for credit must be completed by the taxpayer and filed with the Department for approval. The approved claim will be returned to the applicant. A copy of the approved claim and certification from the IEDC must be attached to any tax return on which the credit is taken. The application and claim can be filed on a monthly, quarterly, semi-annual or annual basis depending on which tax type the taxpayer is claiming the credit for and the filing frequency of the return for the type of tax. Failure to submit the approved BD-100 with the tax return will result in the claim being denied by the Department.

V. ADMINISTRATION OF THE TAX CREDITS

Qualifying taxpayers include pass through entities such as S Corporations, partnerships, limited liability companies, and limited liability partnerships. If the pass through entity is entitled to a credit but does not have state tax liability to which the credit can be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit in the same

percentage as the person's distributive income to which the person is entitled.

If the credit is applied against the taxpayer's adjusted gross income tax, financial institutions tax, or insurance premiums tax, the credit shall be taken on the annual return filed by the taxpayer. If the credit is to be applied against a taxpayer's sales tax liability, the credit can be taken on a monthly basis. A taxpayer may not take a credit against sales tax collected as a retail merchant, but may take a credit against the use tax due on the taxpayer's taxable purchases.

If the credit claimed exceeds the taxpayer's state tax liability for the taxable year, the taxpayer may carry over the excess credit to the following taxable years. A credit may be carried forward for up to six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit. The taxpayer is not entitled to a refund or carryback of any unused credits.

The total amount of credits allowed for biodiesel production, biodiesel blending, and ethanol production may not exceed fifty million dollars (\$50,000,000) for all taxpayers and all taxable years beginning after December 31, 2004. The IEDC shall determine the maximum amount for each type of credit, but the amount must be at least four million (\$4,000,000) for each type of credit.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with a large loop at the beginning and a trailing flourish at the end.

John Eckart
Commissioner